

**RECEIVED  
CENTRAL FAX CENTER****MAY 30 2006**Patent  
Attorney Docket No. 026,314-022  
(formerly BAF-11803/29)**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the Application of:

**FERREE**

Serial No.: 10/630,445

Filed: July 30, 2003

For: METHODS AND APPARATUS FOR  
TREATING DISC HERNIATION AND  
PREVENTING THE EXTRUSION OF  
INTERBODY BONE GRAFT

Group Art Unit: 3731

Examiner: Uyen T. Ho

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR §§ 1.97 and 1.98, the items identified in this Information Disclosure Statement ("IDS") are brought to the attention of the Office. The items are listed on the attached form PTO-SB/08. Also attached are copies of a Supplementary Partial European Search Report and a Notice of Opposition to a European Patent from a related patent.

The items identified in this IDS may or may not be "material" pursuant to 37 CFR § 1.56. The submission thereof by Applicant is not to be construed as an admission that any such patent, publication or other information referred to therein is material or considered to be material (37 CFR § 1.97(h)), or even qualifies as "prior art" under 35 USC § 102 with respect to this invention unless specifically designated by Applicant as such.

**CERTIFICATE OF MAILING (37 C.F.R. §1.8)**

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being transmitted by facsimile to (571) 273-8300 on the date shown below and addressed to the Commissioner for Patents, PO Box 1450 Alexandria, VA 22313-1450.

May 30, 2006  
Date of Deposit  
NB1:685861.1  
Cynthia B. Pacheco

Patent  
Attorney Docket No. 026,314-022  
(formerly BAF-11803/29)

**INFORMATION DISCLOSURE STATEMENT FILING PROVISION:**

☒ This IDS is believed to be timely in that it is being submitted under 37 CFR § 1.97(b), that is (1) within three months of the filing date of the application, which is not a continued prosecution application filed under § 1.53(d); or (2) within three months of entry of the national stage as set forth in 37 CFR § 1.491; or (3) before the mailing of a first Office action on the merits; or (4) before the mailing of a first Office action after filing a request for continued examination under § 1.114. Thus, no fee is required.

☒ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and charge the fee due under 37 CFR § 1.17(p) to the deposit account referenced below.

☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and a statement under 37 CFR § 1.97(e) is included below, thus no fee is required.

☐ This IDS is being submitted under 37 CFR § 1.97(c), that is after mailing of a first Office action on the merits, but before a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311.

☐ The fee due under 37 CFR § 1.17(p) is submitted herewith.

☐ A statement under 37 CFR § 1.97(e) is included below, thus no fee is required. In the event that this IDS is not received before a Final Action or a Notice of Allowance, then Applicant respectfully requests that the Office consider the filing of these papers to be submitted under 37 CFR § 1.97(d) and charge the fee due under 37 CFR § 1.17(p) to the deposit account below.

☐ This IDS is being submitted under 37 CFR § 1.97(d), that is after a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311, but before payment of the issue fee. A statement under 37 CFR § 1.97(e) is included below. The fee due under 37 CFR § 1.17(p) is submitted herewith.

**Statement Under 37 CFR § 1.97(e):**

☐ Each item contained in this IDS was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.

☐ No item contained in this IDS was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing this statement after making reasonable inquiry, no item of information contained in this IDS was known to any individual designated in 37 CFR § 1.56(c) more than three months prior to the filing of this IDS.

NB1:685861.1

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Patent  
Attorney Docket No. 026,314-022  
(formerly BAP-11803/29)

Two references are in a language other than the English language. A concise explanation of relevance is given below (English language abstract).

**FR 2639823 - REPLACEMENT OF THE NUCLEUS OF THE INTERVERTEBRAL DISC BY A POLYURETHANE POLYMERISED IN SITU**

This reference describes a method, a device, and a product permitting replacement of the nucleus of the intervertebral disc after enucleation of the latter. The method is stated to consist in polymerising, in the cavity 4, a mixture 7 resulting in the formation of a polymer. The device is stated to consist of a bag 1 attached to a tube 2. The mixture 7, injected into the bag 1, reacts to form a polyurethane. A device 3 permits closure of the bag 1. The device permits restoration of the functions of the intervertebral articulation.

**Husson et al., "RESTITUTION INTER-SOMATIQUE DU RACHIS LOMBAIRE"**

This reference describes concepts and experimental studies related to inter-somatic nucleoplasty by posterior path during discectomy.

**PAYMENT AND/OR AUTHORIZATION TO CHARGE FEES:**

- ☐ A check in the amount of \$180.00 is enclosed for the above fee(s).  
☐ Please charge \$180.00 to Deposit Account No. 50-2862 for the above fee(s).

The Commissioner is authorized to charge any fees required by the filing of these papers, and to credit any overpayment to O'Melveny and Myers' Deposit Account No. 50-2862.

Respectfully submitted,

O'MELVENY & MYERS LLP

Dated: May 30, 2006

By: John Kappos  
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MAY 30 2006

PTO/SB/08a (08-03)

Approved for use through 07/31/2006. OMB 0051-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Substitute for form 1449A-PTO

# **INFORMATION DISCLOSURE STATEMENT BY APPLICANT**

(Use as many sheets as necessary)

## **Complete if Known**

Sheet	1	of	1	Application No.	10/630,445
				Filing Date	07/30/2003
				First Named Inventor	Ferco
				Art Unit	3731
				Examiner Name	Uyen T. Ho
				Attorney Docket No.	026,314-022

## **U.S. PATENT DOCUMENTS**

Examiner Initials	Cite No. <sup>1</sup>	Document No. Number-Kind Code <sup>2</sup> (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
	1.	US-5746765	05/1998	Rabkin	
	2.	US-5846261	12/1998	Kotula	
	3.	US-4665906	05/1987	Jervis	
	4.	US-5690674	11/1997	Diaz	

## **FOREIGN PATENT DOCUMENTS**

Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document Country Code <sup>3</sup> Number <sup>4</sup> Kind Code (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T <sup>6</sup>
	5.	WO 95/31946	11/1995			
	6.	WO 98/20939	05/1998			
	7.	FR 2639823	06/1990			
	8.	WO 97/26847	07/1997			
	9.	WO 99/02108	01/1999			
	10.	EP 1180978	05/2005			
	11.	WO 99/81840	12/1999			
	12.	WO 95/34331	12/1995			

## **NON PATENT LITERATURE DOCUMENTS**

Examiner Initials*	Cite No. <sup>1</sup>	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s) volume-issue number(s), publisher, city and/or country where published	T <sup>2</sup>
	13.	Cathon, Joseph, C., M.D., "Microsurgical Annular Reconstruction (Annuloplasty) Following Lumbar Microdiscectomy: Preliminary Report of a New Technique," Abstract for Poster Presentation, AANS/CNS Section on Disorders Of The Spine And Peripheral Nerves Annual Meeting, 1999	
	14.	Nucléoplastie Inter-Somatique Par Voie Postérieure Per-Dissectomie: Concept et Etude Expérimentale. J.L. Hussen et al., <u>Rehabilitation Inter-Somatique Du Rachis Lombaire</u> , Sauramps Medical, 1996 pp. 311-320 [and English translation]	

Examiner  
SignatureDate  
Considered

\*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 See Kinds Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. 3 Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). 4 For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. 5 Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. 6 Applicant is to place a check mark here if English language translation is attached.

This collection of information is required by 37 CFR 1.97 and 1.98. This information is required to obtain or retain a benefit by the public which is to be (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 127 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

NH1:685865.1

PTO/SB/08a (08-03)

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